

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LATONYA DANCER,

Plaintiff,

v.

STATE OF TEXAS,

Defendant.

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CIVIL ACTION NO. 5:16-CV-00187-RWS

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Latonya Dancer, an inmate confined at the Woodman State Jail, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissal of this petition for writ of habeas corpus for want of prosecution.


The Court has received and considered the Magistrate Judge's recommendation, along with the record, pleadings and all available evidence. No objections have been filed. The Court agrees with the Magistrate Judge that Petitioner has failed to diligently prosecute this case. Accordingly, finding no plain error in the Magistrate Judge's the findings of fact and conclusions of law, this Court **ADOPTS** the Magistrate Judge's findings and conclusions as those of this Court. It is hereby **ORDERED** that Petitioner's claims are **DISMISSED WITHOUT PREJUDICE**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge

issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). To make a substantial showing, the petitioner need not establish that she should prevail on the merits. Rather, the petitioner must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–484. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–281 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, Petitioner has not shown that any of the issues raised by her claims are subject to debate among jurists of reason. The factual and legal questions advanced by Petitioner are not novel and have been consistently resolved adversely to her position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 23rd day of May, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE